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South Carolina

Ed Madden

Overview

The first of the 13 colonies to declare independence from British rule and the first state to secede from the Union in 1860, South Carolina has a history of political independence, but it also has had a long history of institutionalized bigotry and oppression. When the Charles Town settlement (later Charleston) was established in 1670, three black slaves arrived with the English fleet. Not only does this fact mark South Carolina as "the only English colony in North America where slavery had been entrenched from the very beginning," it also suggests the importance of race and the lingering social and economic effects of institutionalized oppression to the history of the state (Bass and Poole, 2009, p. 3). A history of regional division—based historically on tensions between the wealthy plantation and merchant culture of the coastal low country and the small farmers and anti-federalists of the upstate—has also continued to play an important role and, like the racial divide, continues to inflect the state's GLBT culture (Sears, 1990). It is difficult to articulate a history of sexual difference in South Carolina without acknowledging first the racial, economic, and regional differences that have fractured and structured life in the state.

Among the region's earliest inhabitants, there is evidence of both sexual diversity and gender role variance. Among the Cherokee, Creek, and Natchez peoples, for example, early European accounts include

The Lady of Cofachiqui, chief of her village, showing Hernando de Soto and his soldiers contents in treasure chest, 1898. (Library of Congress)

descriptions of men who took women's roles, occupying a third gender or two-spirit position within society (e.g., Lang, 1998; Roscoe, 1998). Although it wasn't usual for women to accompany war parties and take on leadership roles among the First Peoples of the Southeast, women chiefs—most famously Queen Cofitachequi—seem to have been more prevalent in the Carolinas than elsewhere in the region (Lang, 1998; Snyder, 2009, p. 14).

In 1712, the colonial government of Carolina adopted English common law prohibitions against "buggery," the penalty for which was death. In 1814, almost a century after Carolina had split into North and South Carolina (in 1729), the South Carolina General Assembly revised the law criminalizing the "detestable and abominable vice of buggery whether with mankind or with beast" the penalty being death and forfeiture of property. Unlike other states, which adopted the term *sodomy* or in later years defined sexual crimes more specifically, South Carolina retained the archaic umbrella term of *buggery* through successive revisions of the criminal code to the present.

South Carolina was also the last state to remove the death penalty for these crimes, in 1869. After the Civil War, the Reconstruction-era legislature abolished the death penalty for buggery but failed to institute a new penalty, an oversight corrected three years later in 1872 with a revision of the criminal code, which established a penalty of five years in prison and/or a fine of $500. Convictions for buggery appear not infrequently in newspaper summaries of court proceeds in the early twentieth century—as in *The Pickens Sentinel* (March 8, 1917), "Ralph Baker, buggery; 5 years and $500" ("Many Plead Guilty," 1917).

Beyond such court records, however, it is difficult to trace the history of sexual variance in this period, though some critical documentary evidence comes from personal correspondence (Ellis, 2009). In 1810, in a letter to the woman who would become his mother-in-law, young South Carolina congressman John C. Calhoun expressed shock that their mutual friend Wentworth Boisseau was known to have participated in homosexual sex. He wrote, "It is the first instance of that crime ever heard of in this part of the world. I cannot conceive of how he contracted the odious habit, except, while a sailor to the West Indies" (Ellis 2009, p. 550), thus locating the crime in experiences abroad and among nonwhite racial others.

In 1826, two young South Carolina men who would later become leaders in the Confederacy wrote letters to one another that seem explicit about their sexual relationship. Thomas Jefferson Withers, who later served in the Confederate States Congress, wrote to his college friend James H. Hammond about the frequent pleasure he took from the "poking and punching" of Hammond's "long fleshen pole."

He also imagined Hammond "braying, like an ass, at every she-male you can discover." Hammond would later become a major defender of both state's rights and slavery, serving as the state's governor and then as a U.S. senator until his resignation in 1860, when South Carolina seceded from the Union (Duberman, 1989; see also Ellis, 2006). First published by historian Martin Duberman in 1981, these letters provide important documentary evidence of homosexual activity at the time. Furthermore, the publication raised important questions not only about historical evidence and interpretation but also about "acceptable" areas of historical inquiry and "access to knowledge about our own antecedents" (Duberman, 1989).

Questions of evidence and interpretation also arise when considering the lives of Laura Towne and Ellen Murray, two Pennsylvania abolitionists and educators who moved to St. Helena Island to found Penn Center, a school for freed slaves, in 1862. Close companions for more than 40 years, they exemplify what Lillian Faderman calls a "romantic friendship," sometimes called at the time a "Boston marriage," a model of emotional relationship acceptable for unmarried professional women (Faderman, 1985). While a recent history might refer decorously to their "strong affectionate bond" (Butchart, 2009, p. 18), others would claim them as ancestors to the current movement (Sears, 2002). Similarly, Laura Bragg, who became the director of the Charleston Museum in 1920, maintained a longtime relationship with her companion, Belle Heyward, cousin of DuBose Heyward, author of *Porgy and Bess*. Like Towne, Bragg was a progressive educator, who transformed the educational outreach of the museum, and opened its doors to black patrons (Allen, 2001).

In the late nineteenth and twentieth centuries, there are continuous prosecutions and convictions for buggery (or sodomy), but there is no case law interpreting or applying the term (Painter, 2001; Berendt, 1971). Only one case seems to offer interpretation: a state Supreme Court decision of 1955 that set aside the conviction of sodomy in the case of a married man convicted of performing "an unnatural sex act" on a young girl. Though he was found guilty of committing a lewd act on a child, the judgment suggests that the court did not consider cunnilingus a form of sodomy (*State v. Nicholson*, 1955). Because there is no analysis in the decision, however, it is not clear that the interpretation would apply to other forms of oral sex; indeed, in later discussions of the criminal code, legislators insisted the buggery law applied to both oral and anal sex (Scoppe, 1993). Tellingly, the case does suggest the way that the buggery law could be used to strengthen cases of coerced sex (rape or child abuse)—echoing recent analysis that suggests that sodomy laws in the Southern colonies were historically associated with coercion (Robertson, 2010).

The lack of reported cases and appeals may suggest the oppressive social stigma associated with conviction, but the failure of the legislature to ever update the archaic wording of the statute suggests legislative and perhaps general public silence around the issue as well. Three cases confirm the deep and pervasive social stigma associated with homosexuality. In 1956 a 12-year-old boy sued a Florence newspaper for libel, after it published an article accusing him of attempted sodomy. A story about the "reign of terror" of a neighborhood gang of boys, it accused the boy of "attempted sex perversion," one mother saying, "It's so nasty we don't even like to talk about it among ourselves" (Anderson, 1956; see also retraction, Smith, 1956). Though unnamed, the boy was identified by the newspaper to his parents, teachers, and neighbors. The suit said the article made "grave charges against [his] character." In 1958, he received $5,000 in damages and another $20,000 in punitive damages. (See *Rogers v. Florence Printing Co.*, decided Dec. 6 and the second case, decided Dec. 10, 1958.)

The same year that decision was handed down, less than 100 miles away, another verdict confirmed the stigma of homosexuality with a vengeance. In 1958, a Charleston airman, John Mahon, brutally bludgeoned a gay man to death in his home after an evening of barhopping together. The attorneys for the airman claimed that the young man acted in self-defense, fighting off the improper advances of the victim, Jack Dobbins. Focusing on Dobbins's lifestyle, the defense successfully "transform[ed] Dobbins from

a victim of murder into a dangerous and sinister man who routinely preyed on other men to gain sexual gratification" (Thompson, 2008, p. 3; see also Sears, 1997, pp. 172–173; Sears, 2001, p. 201). The jury of men found Mahon innocent. While the Candlestick Murder, as it was known, falls within the context of Cold War–era demonization of a homosexual menace (in this case a threat to military manhood), it arguably does so in a peculiarly South Carolina way: instead of public outcry, an overwhelming sense of shame and silence dominated both media coverage and community response (Thompson, 2008, pp. 39–40).

Twenty years later, during a 1979 murder trial, the state Supreme Court noted that the stigma of homosexuality could still be used to prejudice jury deliberation. In *State v. Hartfield* (1979), the court noted: "It is common knowledge that a substantial portion of the populace, and presumably a substantial portion of the jurors, look with disdain upon homosexuals. When pursued for any purpose other than to prove or disprove some fact in issue, evidence of a homosexual relationship tends to become an attack upon the character of the defendant." The result is that attorneys may "try the defendant for being a homosexual." All three of these cases confirm the profound social stigma associated with homosexuality in midcentury South Carolina.

By the late 1960s, newspapers were less reticent about sexual variance than they were during the Candlestick Murder. In 1968, an English author who had been prominent in Charleston society underwent sex reassignment surgery, leaving Charleston as Gordon Langley Hall and returning as Dawn Pepita Langley Hall. Hall insisted that she was born intersexual and falsely assigned male gender at birth, though later biographers dispute that claim. Because of her wealth and family background, Hall was welcomed back by Charleston society, but when she later decided to marry John-Paul Simmons, a black fisherman and her chauffeur, the couple faced societal ridicule and harassment. The Charleston paper ran the wedding announcement in the obituaries (Sears, 1997).

The wedding, held January 22, 1969, was the state's first known interracial marriage, and it made national and international news, in part because it coincided with the rise of the civil rights movement in Charleston, but probably also because it came on the heels of the 1967 *Loving v. Virginia* Supreme Court decision, which invalidated laws against interracial marriage. (South Carolina prohibited interracial marriage in the state's constitution, a prohibition that was not repealed by voters until 1998, 30 years after invalidated by the Supreme Court.)

In 1971, a right to privacy was added to the state constitution, though it had no effect on sexual conduct laws. There were some attempts at community organizing through the 1970s—a number of short-lived groups, mostly centered in the state capitol of Columbia, and a 1978 Anita Bryant Barbecue, hosted in Columbia by Peter Lee, who had been active in the civil rights movement. (The white 19-year-old Peter was beaten in front of news media by white counterprotestors at a 1965 NAACP civil rights march in Columbia.) In general, activists found political organizing difficult. As University of South Carolina professor Jim Sears notes, "Before individuals could be mobilized politically, they had to be brought together socially" (Sears, 2001, pp. 290–91). Sears also notes the importance of drag queens to the community organizing integral to gay bar and pageant culture—drag queens such as Samantha Hunter, who was crowned the first black Miss Gay SC in 1979 (Sears, 2001).

Not surprisingly, universities were often centers of community organizing. In 1982 a group of lesbian and gay students at the University of South Carolina requested official student organization status, which university officials denied arguing that the organization "advocated conduct that is illegal in South Carolina." (Ironically, the state attorney general ruled in a 1980 opinion that homosexual advocacy rights organizations "may not be denied official recognition" by public universities.) In a February 1983 U.S. District Court decision, the judge ruled against the university (Staff and Wire Reports, 1983). The appeal to "conduct that is illegal" suggests the importance of the buggery law as a political tool to antigay forces. Whether or not the law was enforced against consenting adults in these decades, it was insistently used in

the courts of public opinion and in the realms of state and local policy to justify systemic and institutional prejudice—as in 1993, when legislators cited the sodomy law in attempting, unsuccessfully, to ban gays and lesbians from adopting children, or in 2001, when state officials argued that universities could not include sexual orientation in nondiscrimination policies since said policies would violate laws against fornication and sodomy.

The 1980s saw increased visibility of the state's LGBT community. The decade began with the creation of a South Carolina chapter of Parents and Friends of Lesbians and Gays or PFLAG, founded by Harriet Hancock after her son came out to her in 1980. The first meeting took place in her living room in August 1982. Hancock later became an attorney active in GLBT work in the state. In 2005, the GLBT community center in Columbia, the Pride Center, was renamed the Harriet Hancock Center in her honor. By the mid-1980s, AIDS had become increasingly a political as well as medical issue. Palmetto AIDS Life Support Services (PALSS), the state's first AIDS service organization, was formed in Columbia in 1985.

The decade ended, however, as a tipping point for visibility and growing politicization. In 1989, after the legislature proposed a bill mandating the quarantine of people with HIV, members of ACT-UP (AIDS Coalition to Unleash Power) joined South Carolina and Atlanta activists to protest the legislation. A "die-in" at a major intersection near the state capitol during midday traffic resulted in the arrest of 41 protestors (O'Shea, 1989). One of the first direct action protests outside the major gay urban centers, this protest focused attention on the treatment and demonization of people living with HIV (Price, 2010; Ellis, 2009). The bill did not pass.

Among those present was New York writer David Leavitt, who wrote in *The New York Times*:

> Afterward, when everyone was bailed out and we were sitting in a motel room watching the television coverage and listening to the radio, we heard an interview with one of the few native Carolinians who had taken part in the protest. He was wearing a hospital mask, he explained to the interviewer, which he'd taken from the room of the first friend of his who'd died of AIDS, and he'd put a SILENCE-DEATH button on that mask to show that he was protesting on behalf of those friends who had died as well as for himself.
>
> At the end of the interview, the reporter asked him if he wanted to say who he was. He hesitated, explaining that coming out was something one had to do one step at a time; he paused; then he said his name and the town where he lived.

Leavitt says the visiting activists didn't expect him to give his name; "instead, he'd spoken out, branded himself, gone public. Too many people in his life had died brutal deaths for him ever to be silent again" (Leavitt, 1989).

As John D'Emilio has noted, AIDS activism prompted more confrontational tactics in local communities and, by the late 1980s, it translated into "a more dynamic movement for gay and lesbian liberation" (D'Emilio, 2000, p. 39). Within months of the ACT-UP protest, local organizers would begin work on another street protest, the first South Carolina gay pride march.

In the fall of 1989, Columbia organizers began to plan a Pride march. With no existing activist organization at that point and only PFLAG and AIDS in the media, it was a brave move for a mostly invisible community. When the march took place on June 23, 1990, the participants spontaneously rushed up the steps of the statehouse where the march ended—staking claim for a political presence in the state (Allard, 1990; SC GLPM, 2007). By 1991, Columbia activists working with the Greater Columbia Community Relations Council had undertaken a study of the status of LGBT people, the results published as *Achieving Full Participation* (1992), which led to housing and employment protections passed by the city in later years.

In 1993, the same year a Gay and Lesbian Business Guild was founded in the state, legislators eager to remove antiquated laws from the criminal code (such as impounding a seaman or deflowering a

maiden) also removed the buggery law from the code. Governor Carroll Campbell quickly vetoed the revision, arguing that it decriminalized sodomy and bestiality, and the legislature quickly reinstated the archaic language of the buggery law (Scoppe, 1993).

Local and affinity organizations began to develop throughout the state in the 1990s. The Alliance for Full Acceptance, founded in Charleston in 1998, focused on a more effective media presence, with billboards and television ads. Bookstores also became community hubs—Bluestocking Books in Columbia and Out of Bounds in Greenville, as well as White Rabbit Books in Charlotte, North Carolina. (Just across the state line, Charlotte, like Atlanta, Goergia, drew LGBT South Carolinians to its vibrant social scene.) As the GLBT movement became more active in the 1990s, so did the forces of antigay bigotry, particularly in the conservative areas of the upstate. A *New York Times* story noted a confluence of factors that contributed to the "rawness of gay rights conflicts" in the state: not just increased GLBT activism and the pervasiveness of fundamentalist Christianity, as one might expect, but also the connection between religious conservatives and the Republican Party, the region's history of institutionalized bigotry, "and the state's resistance to cultural change, racial or otherwise" (Sack, 1998). In 1996 South Carolina passed a Defense of Marriage Act. Also in 1996 the Greenville County Council passed a resolution declaring homosexuality incompatible with community standards (O'Shea, 1996). As a result, the Olympic torch hidden in a closed van, on its way to the Atlanta summer Olympics, passed through the county.

On August 28, 2013, a same-sex couple, Katherine Bradacs and Tracie Goodwin, filed suit against the ban on same-sex marriage in South Carolina (*Bradacs v. Haley*). The couple was married in Washington, D.C. in 2012. The Fourth Circuit Court found the ban on same-sex marriage unconstitutional. When the U.S. Supreme Court refused to review the appeal, same-sex marriage became legal on October 6, 2014. At this time the state Supreme Court has not lifted the stay.

In the decade since the 2003 *Lawrence v. Texas* decision, much of the work in the GLBT community has gone into statewide organizing, a goal that became an imperative when a constitutional amendment banning same-sex marriages went on the ballot in 2006. In 2002, activists from across the state gathered outside Charleston to discuss the lack of statewide coordination. They established the South Carolina Equality Coalition, a coalition of the existing organizations, which later became South Carolina Equality, a statewide organization. A marker of both movement maturity and statewide outreach, the first ever GLBT booth made an appearance at the South Carolina State Fair in 2005. The first South Carolina Black Pride was held in 2006.

Statutes

Adoption and Foster Care Laws

South Carolina does not explicitly prohibit LGBT individuals from becoming foster parents or adopting children. State adoption law does not explicitly forbid adoption by same-sex couples by joint adoption (though the forms presume male/female couples), nor does it prohibit one from petitioning to adopt a partner's child.

Conversion Therapy Laws

There is no law addressing conversion or reparative therapy in South Carolina.

Custody and Visitation Laws

The bias in South Carolina might seem to be against granting custody to lesbian or gay parents—as when a 1978 court denied a mother custody because of her "bohemian" lifestyle, which included association with homosexuals (*Cook v. Cobb*, 1978; Beargie, 1988), yet there have been favorable decisions on custody and visitation since. Most important is *Stroman v. Williams* (1987), in which the South Carolina Court of Appeals awarded a lesbian mother custody, arguing that homosexuality in and of itself is not a bar to custody or visitation rights: "The mere fact that a parent is a homosexual does not alone render the parent unfit." In a final note, the court commented, "We are not in the business of gratuitously judging the private lives of other people."

Donor Insemination and Surrogacy Laws

There are no state laws on artificial insemination or surrogacy, though there were unsuccessful attempts to pass such laws in the mid-1980s (House Bill 2098, the South Carolina Surrogate Parenting Act, Session 105, 1983–1984). South Carolina law does not address artificial insemination beyond a brief reference in the 2010 Responsible Father Registry Law, which includes donors alongside unmarried biological fathers, whose failures to file claims of paternity constitute an implied waiver of parental rights (consent to artificial insemination deemed adequate notice of pregnancy).

Perhaps more useful is the one reference in case law, the 1987 Supreme Court decision *In re Baby Doe*, in which the Court ruled that a husband's consent to his wife's artificial insemination was sufficient to make him legally the father with responsibilities of paternity and child support. Though focused on a heterosexual couple, the language of the law could be used to support donor and surrogacy contracts of same-sex couples. Some online sources suggest that even though there is no law governing surrogacy, courts are generally favorable.

Gender Change on State-Issued ID Laws

In 1983, the attorney general ruled that marriage licenses could not be issued to members of the same sex (reaffirming a similar ruling from 1976), but that if one of the parties had undergone sex reassignment surgery and could be certified by medical authorities to be of a new sex, a marriage license could be issued.

South Carolina has no written policy on drivers' licenses. The generally accepted method, according to TransgenderEquality.org, is to present medical documentation (a letter from a physician) that gender has been changed and a certifying court order to the local Department of Motor Vehicles (http://transequality.org/Resources/DL/DL_policies.html).

Hate Crimes Laws

South Carolina has no hate crimes laws. Legislation has been repeatedly introduced—in 1997 and 1999, after the burning of African American churches, and again in 2007—but has not been passed. Opposition to hate crimes legislation in the late 1990s focused on the inclusion of gender and sexual orientation.

In 2007, the year hate crimes legislation again failed to pass, a young man named Sean Kennedy died as the result of a hate crime. As he left a Greenville bar on May 16, another young man called him a "faggot" and punched him so hard it broke the bones of his face, and he fell back against the asphalt, dying of these injuries. The assailant, Stephen Moller, served 12 months in jail and was on probation for three years. Kennedy's mother was in attendance at the White House ceremony when President Barack Obama signed into law the Hate Crime Prevention Act.

Health Care Laws

Previously limited to family or marital relationship, or more accurately a hodge-podge of local and hospital formal and informal policies, the state now grants hospital visitation rights to a designated health care agent. In 2008, the legislature amended SC Code 62–5-504(E) to provide that any person with a valid health care power of attorney form must be permitted hospital visitation. Same-sex couples still must secure a valid health care power of attorney; without this legal advance directive partners are not guaranteed access. Under the law, a designated health care agent has access to medical information, the power to make medical decisions for the patient, and "the same health care facility or nursing care facility visitation rights and privileges . . . as are permitted to immediate family members or spouses" (SC Code 62–5-504(E)(4)).

Intersexuality and the Laws

At the time of this writing, a Columbia couple has filed lawsuits in both state and federal courts addressing the rights of intersex children—the first such federal lawsuit in the nation. The couple had adopted a child who was born with ambiguous genitalia and both male and female internal sex organs. Though doctors determined that the child might be raised as either a boy or a girl, surgeons surgically "assigned" the child female sex at

16 months while the child was still in foster care. The child, "M.C.," declared himself a boy at age eight. The lawsuits argue that the surgery was medically unnecessary and denied their child the constitutional right to make decisions about his own body (Self, 2013).

Marriage and Family Laws

Public officials claim that no state has been "more ardent, as a matter of public policy" in protecting marriage than South Carolina (Patton, 1996–1997). In 1996, the state prohibited recognition of same-sex marriages; the law states, "A marriage between persons of the same sex is void *ab initio* and against the public policy of this State" (SC Code Ann. 20–1-15).

In 2006 South Carolina passed an amendment making it unconstitutional for the state to perform or recognize same-sex marriages, and it further prohibits its recognition of same-sex marriages contracted elsewhere. The law also prohibits recognition of any form of same-sex relationship, such as domestic partnerships or civil unions, by any governmental entity. The amendment states:

> A marriage between one man and one woman is the only lawful domestic union that shall be valid or recognized in this State. This State and its political subdivisions shall not create a legal status, right or claim respecting any other domestic union, however denominated. This State and its political subdivisions shall not recognize or give effect to a legal status, right or claim created by another jurisdiction respecting any other domestic union, however denominated. Nothing in this section shall impair any right or benefit extended by the State or its political subdivisions other than a right or benefit arising from a domestic union that is not valid or recognized in this State. This section shall not prohibit or limit parties, other than the State or its political subdivisions, from entering into contracts or other legal instruments. (SC CONST. Art. XVII, Sect. 15)

The referendum was approved by 78 percent of voters. However, Katherine Bradacs and Tracie Goodwin filed suit on August 28, 2013, with the 4th Circuit Court to overturn the South Carolina ban on same-sex marriage (*Bradacs v. Haley*). The court found in favor of Bradacs and Goodwin and declared South Carolina's ban on same-sex marriage unconstitutional. When the U.S. Supreme Court refused to review the appeal, same-sex marriage became legal on October 6, 2014. As of this writing, the state Supreme Court has failed to lift the stay.

The validity of partner benefits offered by governmental or state institutions has yet to be tested.

Nondiscrimination in Employment Laws

South Carolina has no statewide protections against job discrimination based on sexual orientation or gender expression. In 1976, the attorney general of South Carolina, Daniel McLeod, issued an opinion confirming that homosexuality was the valid ground for refusing state employment and that "discovery of homosexuality" was valid basis for firing an employee (Op. No. 76–4345)—an opinion that remains unchallenged and unrescinded.

Although there is no state law, some government agencies, such as the South Carolina Forestry Commission, and some universities, such as the University of South Carolina, do include sexual orientation in nondiscrimination policies, as does Richland County.

Both the city of Columbia and the city of Charleston include sexual orientation in their nondiscrimination policies for municipal employment. Columbia also prohibits discrimination on the basis of sexual orientation or gender identity in housing and public accommodations (passed March 2008). In 2012, Folly Beach passed an ordinance prohibiting discrimination in housing.

School Laws

In 1988, South Carolina passed the Comprehensive Health Education Act, which prohibits discussion of non-heterosexual relationships except in the context of disease prevention. The law states: "The program of instruction provided for in this section may not include a discussion of alternate sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases" (SC ST SEC 59–32–5). While the "no promo homo" clause explicitly addressed only the mandated hours

Latta police chief Crystal Moore stands beside her police SUV on July 10, 2014, in Latta, South Carolina. Residents of Latta rallied around Moore after the mayor fired her and mentioned he didn't like she was gay, even voting to strip the mayor of his power so Moore could get her job back. (AP Photo/Jeffrey Collins)

of health education, the effect has been to stifle discussion of homosexuality across the curriculum, as both state and school officials used the law to prohibit discussion of homosexuality.

For example, in a 1997 opinion, the attorney general's office ruled that because the act limits discussions of "alternative sexual lifestyles" to instruction about sexually transmitted disease, it would prohibit the distribution of a magazine that included an essay from the point of view of a lesbian teenager because it did not address disease prevention. The act, wrote Assistant Deputy Attorney General Robert Cook, defines "the limits of the discussion of homosexual relationships in the classrooms of the State's schools." The ruling thus implies that the stipulation applies across "a school district's program of instruction," and is not limited to the health education classes governed by the act. More recently, in 2004, a Fort Mill high school principal removed gay marriage as a topic for a planned student election-year debate (intended to mirror presidential debate topics), citing his concern that it would clash with the health education act (Associated Press, 2004).

When queried in 2005 by South Carolina Equality, then state superintendent of education Inez Tenenbaum confirmed that the provisions of the Comprehensive Health Education Act apply only to the mandated hours of health education and not to other areas of instruction. Without written policy, however, many teachers and administrators continue with the mistaken assumption that homosexuality cannot be discussed other than within the context of disease. At the time of this writing, proposed House Bill 3435 would amend the act to guarantee "medically

accurate" information, but it does not address the ongoing legal suppression of information regarding sexual orientation.

In 2004, the S.C. Republican Party platform called for the firing of gay and lesbian schoolteachers.

In 2006, South Carolina passed a safe schools law, addressing bullying and intimidation (SC CODE ANN. 59–63–130). The law does not explicitly include sexual orientation or gender expression, but it does not exclude these categories either and some school districts have specifically included sexual orientation in their anti-bullying policies.

Sodomy Laws

South Carolina was the last to repeal the death penalty for sodomy (in 1869). In 1895, the state constitution was amended to bar those convicted of sodomy from voting, a prohibition not officially repealed until 1970.

At the time of its invalidation by *Lawrence v. Texas*, the buggery law read: "Whoever shall commit the abominable crime of buggery, whether with mankind or with beast, shall, on conviction, be guilty of felony and shall be imprisoned in the Penitentiary for five years or shall pay a fine of not less than five hundred dollars, or both, at the discretion of the court" (S.C. Code Ann. Sec. 16–15–120).

Other states had greater maximum penalties (15 and 20 years imprisonment), but South Carolina's five-year punishment was mandatory upon conviction, so that while it seems less punitive than other laws, it was actually, in practice, one of the strictest (Cantor, 1964). In 1993 the legislature changed the penalty from a mandatory five years to a maximum of five years.

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South Dakota

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Overview

South Dakota is located in the Upper Great Plains region of the United States, and is bordered on the north by North Dakota. The 2012 census population estimate was 833,354 (United States Census Bureau 2013). The largest cities are Sioux Falls and Rapid City. South Dakota has six public universities, the largest of which are South Dakota State University in Brookings and the University of South Dakota in Vermillion. South Dakota is also home to seven American Indian reservations. The service industry, agriculture, and tourism drive the state's economy. South Dakota is traditionally one of the most politically conservative states in the Upper Great Plains/Midwest region. Only 2.2 percent of the state's population self-identify as LGBTQ, although this number may not be entirely accurate due to the nature of discrimination in rural areas (Gates and Newport, 2013). Overall, South Dakota's LGBTQ history is best defined negatively—meaning the absence of LGBTQ issues in current state laws, as well as outmoded sodomy legislation, define the matter rather than positive actions.

The area recognized as present-day South Dakota, along with present-day North Dakota, was originally part of what was organized as the Dakota Territory in 1861. In 1862, the territory produced a criminal code that set the sentence for sodomy as being punishable with a sentence of a year to life. In 1877, this law was changed so that the minimum penalty was dropped and the maximum penalty was set at 10 years:

> Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the territorial prison not exceeding ten years. . . . Any sexual penetration, however slight, is sufficient to complete the crime against nature." (Territorial Revised Codes of Dakota, 1877, §346 & 347)

When the Dakota Territory split and South Dakota became a state in 1889, it refrained from making any changes to the sodomy law. The first modification occurred in 1910, in *State v. Whitmarsh*. In this case, the South Dakota Supreme Court determined that fellatio

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